know more

Free legal help to navigate the Royal Commission

Submission to the New South Wales Government consultation in relation to the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse

4 September 2017

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1. Introduction

i. knowmore legal service

knowmore is a free, national legal service providing legal advice and assistance, information and referral services via a free advice line and face-to-face services in key locations, for people considering telling their story or providing information to the Royal Commission into Institutional Responses to Child Sexual Abuse (the 'Royal Commission'). Our service is multidisciplinary, staffed by solicitors, counsellors, social workers and Aboriginal and Torres Strait Islander Engagement Advisors, and is conducted from offices in Sydney, Melbourne and Brisbane.

knowmore has been established by the National Association of Community Legal Centre, with funding from the Australian Government, represented by the Attorney-General's Department.

Our service was launched from our Sydney office in July 2013 and, since that time, we have provided services to over 7,300 individual clients. The majority of those clients are survivors of institutional child sexual abuse. 25% of those clients live in New South Wales. Around 23% of our clients identify as Aboriginal and/or Torres Strait Islanders.[1]

Many of the clients we have assisted have been seeking legal advice about their options, if any, to obtain financial and other redress in relation to sexual and other abuse they suffered as children in institutions. Some of these clients have had direct experience with the civil litigation system; usually as a potential litigant pursuing a claim. Very few have ever actually commenced civil proceedings; in many cases, this has been primarily due to the barriers presented by the previous laws about limitation periods, and the existing laws relating to the duty of institutions and the identification of a proper defendant to sue (and who may have means to satisfy any judgment).

At this time, **knowmore** does not represent clients in ongoing cases relating to actions for compensation, such as civil claims for damages or claims for redress made to an institution. **knowmore** does not advise clients upon issues such as the prospects of success of these potential options. We do provide referral services, and in such circumstances we advise clients about referral options to seek advice from an experienced personal injury lawyer familiar with the issues arising in cases of claims for institutional abuse. For that purpose, we have established a national panel of experienced private lawyers, who meet specific criteria that reflect their experience with and understanding of the needs of this client group.

[1] See **knowmore**, Service Snapshot (Infographic as at 30 June 2017). A copy is attached as Appendix 1 to this submission

In responding to the Consultation Paper, we have drawn on what we have learned, through our work, about the collective experience of our clients and their needs. It should be noted that much of the information provided by our clients, and also by lawyers on our abovementioned panel, reflects recent and/or contemporaneous experiences (particularly in regard to institutional responses), rather than historical experience.

ii. Purpose of the Consultation Paper

knowmore welcomes the further steps taken by the New South Wales Government to consider the recommendations made by the Royal Commission in its 2015 Redress and Civil Litigation Report. We note the timely implementation by the Government of the Royal Commission's recommendations around the reform of limitation periods[2], and the adoption of model litigant guidelines for responding to civil claims arising from child abuse.[3]

We also note that this Consultation Paper (as outlined at paragraph 1.11) will be:

> *"… a starting point for discussions, to enable the Government to look broadly at reform options and to seek community views about the recommendations and the potential implications."*

We also note the intention of the government to use the Consultation Paper as a framework to guide face to face discussions with stakeholders about the Royal Commission's civil litigation recommendations. **knowmore** would welcome the opportunity to participate in that consultation process.

iii. The importance of redress as an alternative to civil litigation

knowmore believes that any reform of the civil litigation system should be guided by principles of fairness, equality and justice. We also note the fundamental importance of ensuring that survivors of institutional child abuse are afforded meaningful opportunities to access justice and, most importantly, choice in how to pursue outcomes that are appropriate and important to them.

Implementation of the reforms recommended by the Royal Commission regarding the liability of institutions; the identification of a proper defendant; and requiring institutions to have relevant insurance cover will significantly assist survivors who are seeking to establish civil claims against institutions and their officials, and will facilitate the disposition of those claims on their merits.

[2] Royal Commission, *Redress and Civil Litigation Report* (2015). Recommendations 85-88 inclusive
[3] Royal Commission, *Redress and Civil Litigation Report* (2015). Recommendations 96-99 inclusive

However, in our experience,[4] and as found by the Royal Commission,[5] many survivors of institutional child abuse will never be in a position to successfully pursue civil claims through the courts, as these particular claimants face considerable evidentiary and other barriers in accessing compensation through the civil litigation system, despite the reforms undertaken to date and those under current consideration. This is particularly the case for survivors of historical abuse, given the prospective nature of the reforms recommended by the Royal Commission about the duty of institutions.

We therefore reiterate our view, as set out in detail in our submissions to the Royal Commission, that it is both necessary and desirable for the New South Wales Government to opt in to the national redress scheme that is being established by the Commonwealth Government. Without the participation of State Governments and non-Government institutions in the Commonwealth Redress Scheme, it is our view that many survivors will never be able to receive just outcomes that are truly meaningful for them.

It is also critically important that survivors continue to have access to competent, trauma-informed and culturally appropriate legal assistance through **knowmore**, to enable them to make informed choices about exercising their legal rights in respect of redress and/or enhanced civil law remedies.

[4] **knowmore,** Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 5, Civil Litigation, pp.3-4. See www.knowmore.org.au/resources/issues-papers/
[5] Royal Commission, *Redress and Civil Litigation Report* (2015), pp.431-433

2. General comments on actions against institutions and the recommendations of the Royal Commission

i. Actions against institutions

The Civil Litigation component of the Royal Commission's *Redress and Civil Litigation Report* outlines the options available to survivors of institutional child abuse to seek to recover damages through bringing civil claims. However, survivors bringing civil actions for institutional child abuse face many significant difficulties under the current law.

Obviously the most straightforward option is to sue the perpetrator(s) of the abuse, for the tort of battery. However the reality facing survivors is that in many cases their perpetrator has no significant assets from which to satisfy a judgment. The frequent elapsing of considerable time between the occurrence of the abuse and the survivor being able to make an effective report and/or take action to seek justice for their experience,[6] also means that often the perpetrator is deceased by the time civil action is contemplated, leaving no significant estate.

Accordingly, to recover compensation survivors often need to look to the relevant institution. There are three primary approaches to establishing institutional liability in these cases, namely:

- bringing an action in negligence;
- bringing an action relying on the vicarious liability of the institution for the abuse committed by the perpetrator; and
- bringing an action for the breach of the institution's non-delegable duty to ensure third parties take reasonable care to prevent harm.

The Royal Commission has identified and the Consultation Paper sets out some of the difficulties currently faced by child abuse plaintiffs in seeking to establish organisational/institutional liability. These may include:

- For actions in negligence – the plaintiff must prove they were owed a duty of care by the institution; that duty was breached through a failure to exercise reasonable care; and that breach caused the harm alleged. On the current state of the law, there may be difficulties in establishing that an organisation had a duty of care to prevent abuse from occurring through the criminal conduct of others:

[6] The Royal Commission has found that the average time for a survivor of sexual abuse in an institutional context to make a disclosure is 22 years, with men taking longer than women to disclose. Royal Commission, *Interim Report,* June 2014, p.6

The unpredictability of criminal behaviour is one of the reasons why, as a general rule, and in the absence of some special relationship, the law does not impose a duty to prevent harm to another from the criminal conduct of a third party, even if the risk of such harm is foreseeable. [7]

- For actions founded on vicarious liability, legal responsibility is imposed on the institution for misconduct by another party, even if the institution is not itself at fault. However, under Australian law plaintiffs have found it difficult to establish vicarious liability outside the existence of a clear employer-employee relationship. This presents particular difficulties for survivors wishing to establish institutional/vicarious liability where their perpetrator was not an employee of the relevant institution (such as a volunteer or a minister of a religion). Additionally, a plaintiff must establish that the wrongful conduct occurred within the scope or course of the relevant employment (we will address these issues in further detail below).

- Non-delegable duties have traditionally been imposed in certain categories of relationship, requiring one party to take care for another's safety. For actions for breach of a non-delegable duty to prevent harm, Australian courts have shown a reluctance to include intentional criminal conduct within the scope of non-delegable duties. In the 2003 decision of *Lepore* (a case involving the sexual abuse of a student by a teacher), a majority of the High Court held that a school's non-delegable duty of care with respect to a pupil did not extend to the intentional criminal conduct of a teacher, in the nature of sexual abuse.[8] The High Court determined not to revisit this aspect of *Lepore* in the recent decision in *Prince Alfred College Incorporated v ADC* [2016] HCA 37.[9]

Beyond the difficulties attaching to the above specific causes of action, there are the more general barriers facing institutional child abuse plaintiffs, as the Discussion Paper acknowledges[10], namely:

- identifying a defendant to sue can also be difficult because the way an institution is structured may mean that it does not have 'legal personality' and therefore cannot be sued;
- even if an institution has 'legal personality', it may not have legal responsibility for the actions of the perpetrator of the abuse; and
- even if an institution is found to be liable, it may not have sufficient assets or insurance cover which extends to abuse.

[7] *Modbury Triangle Shopping Centre Pty Ltd v Anzil* (2000) 205 CLR 254, per Gleeson CJ at [29]
[8] *New South Wales v Lepore* (2003) 212 CLR 511 at 534-535 [36]-[39], 598-601 [254]-[263], 609-610 [292]-[295], 624 [340]
[9] At [36]-[37]
[10] At p.9

ii. The recommendations of the Royal Commission

The Royal Commission in its Report made seven recommendations (89 – 95) about enhancing the legal responsibility of institutions for child sexual abuse, ensuring there is someone to sue, and requiring relevant institutions to have insurance.

knowmore recommends that all of these recommendations should be implemented by the New South Wales Government.

In considering implementation of the Royal Commission's recommendations, three important matters must be noted.

First, while the six Commissioners inquiring into institutional responses to child sexual abuse were appointed by the Governor-General of the Commonwealth, all Australian States have issued Letters Patent (or their equivalent), to appoint the same six Commissioners to conduct the same inquiry into institutional responses to child sexual abuse under their State laws. The Commissioners were formally appointed under New South Wales law [11] on 25 January 2013.

Secondly, the Commission released its final report on *Redress and Civil Litigation* in September 2015. With the Commission's final report due in December 2017, this was an interim report, but it contained the Commission's final recommendations on redress and civil litigation. The report addresses that part of the Letters Patent, which required the Commission to inquire into:

> *What institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims …*

The report made recommendations about the provision of effective redress to survivors through the establishment, funding and operation of a single national redress scheme. It also contained recommendations for reforms to civil litigation systems *"to make civil litigation a more effective means of providing justice for survivors."*

The Commission's final recommendations on civil litigation reform have been comprehensively informed by a huge amount of work and information. This body of work included:

- Numerous public hearings involving cases where survivors had sought to pursue claims for damages under existing arrangements and laws. Several of these case studies have involved institutions in New South Wales.
- Thousands of private sessions where survivors have explained their experiences of abuse and what they need for justice.
- The gathering of submissions following the release of four Issues papers - on the *Towards Healing* process of the Catholic Church; civil litigation; redress; and

[11] *Royal Commissions Act 1923* (NSW)

statutory victims of crime compensation schemes. These four papers resulted in the lodging of over 190 public submissions, representing a diverse range of interests and views.[12] Submissions were lodged by survivors; Governments; support services; institutions; lawyers; academics; industry groups and others.

- Holding roundtables to consult: *"[F]rom September to November 2014 a series of private roundtables were held with invited participants to discuss redress and civil litigation. Participants included representatives from survivor advocacy and support groups, government representatives, lawyers and insurers, legal academics, faith based organisations and community service organisations."* [13]
- On 30 January 2015 a very detailed Consultation Paper was released, inviting further input from the community into the issues raised in the paper.
- In March 2015 a public hearing was held *"to enable invited persons and institutions to speak to their written submissions to the Royal Commission's consultation paper and particular issues relevant to the Royal Commission's work on redress and civil litigation."* [14]

The above reflects the Commission's efforts to obtain information from all relevant sources, across Australia, to inform its final report on redress and civil litigation reforms. All points of view were sought and represented in those processes. In our experience, the level of consultation and community engagement leading to the Commission's final recommendations exceeds that undertaken by any previous Commission of Inquiry.

The Commission's final recommendations are balanced and sound and have clearly been arrived at after prolonged and very careful consideration as to all of the impacts, upon all relevant stakeholders. In our submission, it follows that in considering and implementing reform in New South Wales, there should be no significant derogation from the recommendations of the Commission.

Finally, we note the Discussion Paper[15] raises the potential impacts of reform upon the provision of services by institutions to children. That is, the proposed reforms may be seen by institutions as increasing the risks related to providing services, which in turn might lead to a reduction in services in order to limit that risk. The Discussion Paper also notes the submission made by Professor Patrick Parkinson suggesting that the changes could *"drive voluntary organisations out of providing the facilities for children which are so important to the community."* We make two comments about this concern.

First, the Royal Commission's recommendations are designed to provide an appropriate balance between the competing public policy interests of child protection and accessible service provision. This is particularly reflected in the crafting of recommendations 89 -91

[12] See http://www.childabuseroyalcommission.gov.au/policy-and-research/our-policy-work/redress
[13] See http://www.childabuseroyalcommission.gov.au/policy-and-research/our-policy-work/redress
[14] Case Study 25: see http://www.childabuseroyalcommission.gov.au/case-study/93e59a38-c3df-4528-b479-f0e83d4ff19a/case-study-25,-march-2015,-sydney
[15] At p.11

inclusive, which relate to the imposition of non-delegable duties upon institutions, with only certain categories of institutions (as per recommendation 90), being the subject of the strict liability imposed by recommendation 89. The Royal Commission's report addressed in some detail the reasons why this new statutory duty should not apply to other categories of institutions, specifically noting community-based and not-for-profit organisations, which are to be the subject of the reverse onus reform set out in recommendation 91. In considering the impact of these reforms on institutions, it must also be noted that the Royal Commission has recommended that these reforms operate with prospective, rather than retrospective, effect.

Secondly, the extensive work of the Royal Commission over the past four years has exposed what can only be described as a national, catastrophic and completely unacceptable failure by Australian institutions to adequately protect vulnerable children from sexual abuse. Over 4,000 individual institutions have been reported as being locations where child sexual abuse occurred.[16] It is fair to say that Australians aware of the Royal Commission's work have been appalled by its revelations and particularly the repeated exposure of conduct on the part of previously respected institutions and their officials that fell so far short of the community's expectations about the standards of care and protection that should be provided to children. Every day our legal service endeavours to provide assistance to the victims of this national failure, who carry with them a life-long legacy of complex trauma arising from their victimisation and which almost inevitably impacts adversely on multiple aspects of their lives, including their relationships, mental and physical health, financial status and employment.

Implementation of the Royal Commission's civil litigation reforms will obviously impose higher standards on institutions providing services to children. As such, resourcing demands around the adoption of improved practices and accountability, and possibly higher insurance premiums, will follow.

However, as the Royal Commission noted, *"legal duties are important for prescribing the standard that the community requires of institutions."*[17] If the implementation of enhanced duties and higher standards forces some institutions out of delivering services to children, because they unwilling to now invest the time and resources in meeting the standards the community expects to protect our children, we suggest that is no bad thing.

[16] Opening remarks to Case Study 57 – Justice McClellan http://www.childabuseroyalcommission.gov.au/case-study/e341c435-f077-4a98-96eb-8d48779c1d98/case-study-57,-march-2017,-sydney

[17] Royal Commission, *Redress and Civil Litigation Report (*2015), p. 56

3. Consultation paper questions

i. A preliminary issue: a consistent definition of child abuse

Question 1 - What kind of abuse should be covered by civil litigation reforms?

As the Discussion paper notes, the recommendations of the Royal Commission were necessarily limited by the Letters Patent issued to it, which for present purposes, restricted it to the context of considering child sexual abuse occurring in institutional settings.[18]

However, as the Letters Patent specifically acknowledged, child sexual abuse *"may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect."* Further to this, the Royal Commission has since recognised that*"…in particular instances, other unlawful or improper treatment, such as physical abuse or neglect, or emotion or cultural abuse, may have accompanied the sexual abuse."*[19] Indeed, the evidence in so many of the Royal Commission's public hearings[20] has established both the prevailing brutality and the frequency of multiple forms of abuse in many Australian institutions entrusted with the care of children.

This is the reported experience of the majority of our survivor clients. Our work reflects that the sexual abuse of children in many institutions, especially residential homes, rarely occurred in isolation of physical and emotional abuse and that at times, the boundaries between different forms of abuse often overlapped. Some of our clients have spoken of institutional cultures where extreme physical abuse and degradation of children created a culture which in turn facilitated the occurrence of sexual abuse.

We have also spoken to clients who suffered extreme physical and emotional abuse in residential homes and other institutional settings, but who did not experience sexual abuse within the Royal Commission's Terms of Reference.

However, the majority of clients who have reported surviving sexual abuse also report enduring physical and emotional abuse; in many institutions, particularly residential home settings, it seems rare for sexual abuse to have occurred in isolation of other mistreatment.

This reality needs to be recognised in the steps now being taken to enhance survivors' access to justice, by being inclusive of all of the forms of abuse they suffered. Other appropriate aims of law reform in this context should be to ensure consistency in the relevant laws applying to institutional child abuse claims, and to promote the disposition of claims by allowing plaintiffs to pursue all aspects of their experience of abuse in the one action. It is somewhat trite to note that forcing potential plaintiffs to pursue separate

[18] See generally the discussion at pp. 99-102 of the Royal Commission's *Redress and Civil Litigation Report* (2015)

[19] Royal Commission *Redress and Civil Litigation Report* (2015), p.5

[20] Such as Case Study 7 involving the Parramatta Training School for Girls and the Institution for Girls in Hay, as noted at p.13 of the Discussion Paper

remedies or actions for differing forms of abuse will be inherently and highly re-traumatising, and lead to the likely litigation of challenging issues around causation and assessment of loss and damages.

Accordingly, we submit that reform should encompass all forms of child abuse – including sexual, physical, psychological/emotional and cultural abuse – and that civil litigation reforms should adopt a broad definition of child abuse.

Question 2 - Should the definition used in the *Limitation Amendment (Child Abuse) Act 2016 (NSW)* be adopted, or should a different definition be used?

As the Discussion Paper notes, one option is to adopt the definition of 'child abuse' used in the *Limitation Amendment (Child Abuse) Act 2016* (NSW). That Act defined child abuse as:

> *(2) In this section, **child abuse** means any of the following perpetrated against a person when the person is under 18 years of age:*
>
> *(a) sexual abuse,*
>
> *(b) serious physical abuse,*
>
> *(c) any other abuse (**connected abuse**) perpetrated in connection with sexual abuse or serious physical abuse of the person (whether or not the connected abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse).*
>
> *(3) To remove doubt, connected abuse is child abuse only if both the connected abuse and the sexual abuse or serious physical abuse in connection with which it is perpetrated are perpetrated when the person is under 18 years of age.* [21]

In the second reading speech for the above amending legislation, the then New South Wales Attorney General the Hon. Gabrielle Upton MP, explained why this broader definition was adopted.

> *The threshold for removal of the limitation period is the sexual or serious physical abuse of a child or young person under the age of 18 years. If this threshold has been met, then other forms of abuse connected to the threshold abuse, such as psychological abuse or minor physical abuse, can be considered in determining the claim. This ensures that the court can consider the whole context of abuse when determining the substance of a claim. "Connected abuse" can be perpetrated by the same person who perpetrated the threshold abuse, or by another person. To avoid doubt, the Bill makes it clear that both the "threshold abuse" and "connected abuse" must have occurred when the victim was under the age of 18 years.*

[21] Section 6A *Limitation Act 1969* (NSW)

… This broader approach recognises that many children who have been maltreated experience multiple forms of abuse. For example, a perpetrator of sexual abuse may also use physical violence, grooming and psychological manipulation to prepare a child for sexual activity or to ensure that a child does not report the abuse. The evidence demonstrates that non-sexual forms of abuse, such as serious physical abuse, can be equally as traumatic as child sexual abuse.

… To avoid being overly prescriptive, the Bill does not exhaustively define what conduct constitutes "sexual abuse" or "serious physical abuse". Rather, the Bill requires courts to determine whether or not abuse has occurred having regard to the circumstances of each individual case and the ordinary meaning of the terms. The term "child abuse" should be interpreted in a beneficial manner.

…. "Connected abuse" could include psychological abuse where a child is manipulated to feel complicit in the abuse, where a child is threatened to prevent them from reporting the abuse, or where a child is coerced into covering up the abuse. It would also include "grooming", which is defined by the royal commission as "actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child to lower the child's inhibitions in preparation for sexual activity with the child". "Connected abuse" could also include minor physical abuse that does not meet the threshold of serious physical abuse, such as minor physical assaults… [22]

Those comments remain apposite to the current proposed reforms.

As noted above, there are advantages in adopting a consistent definition with that used in the limitations reforms. While those reforms were procedural in nature, in that they related to the bringing of existing causes of action, we do not readily see any difficulty arising if a consistent definition is adopted in the reforming legislation around the liability of institutions. There should be consistency across the legislation that provides the cause of action and the legislation which regulates the subsequent proceedings.

We would suggest that the only departure that should be contemplated for present purposes would be to remove the requirement that 'physical abuse' be 'serious' to found a claim. In reality, claims relating to physical abuse that is not 'serious' in nature are unlikely to be brought, given the time and expense involved in civil proceedings.

The New South Wales Government should seek to avoid the situation which now exists in Victoria, where the definitions of 'child abuse' adopted in the amendments to the *Limitation of Actions Act* 1958 (Vic)[23] and to the *Wrongs Act 1958* (Vic)[24] differ, with the limitations legislation specifically including a reference to psychological abuse (arising out of sexual or physical abuse). While the non-inclusion of psychological abuse from the Victorian *Wrongs Act* should not result in a plaintiff being unable to recover damages for psychological harm

[22] Attorney General the Hon. Gabrielle Upton, 2nd Reading Speech – *Limitation Amendment (Child Abuse) Act 2016* (NSW), 16 February 2016
[23] See s.27O(1)
[24] See s.88

suffered as a result of sexual or physical abuse, to avoid any uncertainty we would recommend inclusion in the amending legislation, through the adoption of the consistent definition.

If it is proposed to in turn define the terms 'physical abuse 'and 'sexual abuse' we would suggest they be defined broadly, and not exhaustively.

ii. Issue A: The liability of institutions

New non-delegable duty

Question 3 - Should the Royal Commission's recommendations for a new non-delegable duty be adopted?

Tracing the liability of the institution in child abuse matters is one of the many hurdles faced by survivors. As we have noted above, the law as it stands currently in Australia is unclear and needs a legislative framework to clarify and ensure stronger protections for children, to afford survivors justice, and to properly hold institutions accountable for the harm that arises from abuse connected to them.

The Discussion Paper notes the decisions of the High Court in the cases of *Lepore* [25] and *Prince Alfred College.* In considering whether New South Wales should adopt the Royal Commission's recommendations for a new non-delegable duty (Recommendations 89 & 90), it is useful to consider the current state of the common law in light of the High Court's decision in *Prince Alfred College* and the implications of that decision for actions brought by institutional child abuse plaintiffs.

In the *Prince Alfred College* case, the High Court dealt with, among other issues, the liability of an institution for the deliberate criminal acts (child sexual offences) committed by an employee.

Key facts of the case relevant to the vicarious liability point were as follows:

- The case involved a boarding school context. The plaintiff was a 12 year old boarder when the boarding house master, Bain, sexually abused him. This happened on repeated occasions over some months during 1962, at the school and elsewhere. Bain was convicted of criminal offences against the plaintiff and other boys (in 2007).
- Bain lived in the boarding house, in his own room. He was present in the boys' dormitory and supervised them in the evenings, during their bedtime preparations, which included nightly showers.
- Bain told the boys stories after 'lights out' and sat on the plaintiff's bed to do so. In that context he began to abuse the plaintiff. Bain also abused the plaintiff in Bain's own private room.

[25] *New South Wales v Lepore* (2003) 212 CLR 511

The plaintiff argued (among other claims) that the school should be held vicariously liable for the abuse committed by Bain, arguing there was a sufficiently close relationship between what he was employed to do and the abuse he committed.

The plaintiff was unsuccessful at trial,[26] but that decision was overturned on appeal,[27] the South Australian Court of Appeal finding that the abuse occurred during Bain's role of employment, which included being in the dormitory, and that the abuse occurred in the 'ostensible ' pursuit of his role. The College appealed to the High Court.

While the appeal was determined on the limitations/extension of time issue,[28] the plurality (French CJ, Kiefel, Bell, Keane and Nettle JJ) considered that it was appropriate to consider the issue of the institution's vicarious liability because it was both relevant to the extension of time issue, and as the existing state of the law was impacted by the differing judgments in *Lepore.* The plurality reviewed the relevant authorities and suggested that the 'relevant approach' was as follows: [29]

> *In cases of the kind here in question, the fact that a wrongful act is a criminal offence does not preclude the possibility of vicarious liability. As* Lloyd v Grace, Smith & Co *shows, it is possible for a criminal offence to be an act for which the apparent performance of employment provides the occasion. Conversely, the fact that employment affords an opportunity for the commission of a wrongful act is not of itself a sufficient reason to attract vicarious liability. As* Deatons Pty Ltd v Flew *demonstrates, depending on the circumstances, a wrongful act for which employment provides an opportunity may yet be entirely unconnected with the employment. Even so, as Gleeson CJ identified in* New South Wales v Lepore *and the Canadian cases show, the role given to the employee and the nature of the employee's responsibilities may justify the conclusion that the employment not only provided an opportunity but also was the occasion for the commission of the wrongful act. By way of example, it may be sufficient to hold an employer vicariously liable for a criminal act committed by an employee where, in the commission of that act, the employee used or took advantage of the position in which the employment placed the employee vis-à-vis the victim.*
>
> *Consequently, in cases of this kind, the relevant approach is to consider any special role that the employer has assigned to the employee and the position in which the employee is thereby placed vis-à-vis the victim. In determining whether the apparent performance of such a role may be said to give the "occasion" for the wrongful act, particular features may be taken into account. They include authority, power, trust, control and the ability to achieve intimacy with the victim. The latter feature may be especially important. Where, in such circumstances, the employee takes advantage of his or her position with respect to the victim, that may suffice to determine that the wrongful act should be*

[26] [2015] SASC 12
[27] [2015] SASFC 161
[28] The High Court holding that there was no basis to allow an extension of the limitation period
[29] At [80] – [81]

> *regarded as committed in the course or scope of employment and as such render the employer vicariously liable.*

Turning to the facts of the particular case, the plurality said:[30]

> *In the present case, the appropriate enquiry is whether Bain's role as housemaster placed him in a position of power and intimacy vis-à-vis the respondent, such that Bain's apparent performance of his role as housemaster gave the occasion for the wrongful acts, and that because he misused or took advantage of his position, the wrongful acts could be regarded as having been committed in the course or scope of his employment. The relevant approach requires a careful examination of the role that the PAC actually assigned to housemasters and the position in which Bain was thereby placed vis-à-vis the respondent and the other children*.

In a separate judgment Gageler and Gordon JJ also allowed the appeal, on the basis that an extension of time should not have been granted. Their joint judgment also addressed how the plurality's 'relevant approach' will be applied in future cases:[31]

> *We accept that the approach described in the other reasons as the "relevant approach" will now be applied in Australia. That general approach does not adopt or endorse the generally applicable "tests" for vicarious liability for intentional wrongdoing developed in the United Kingdom or Canada (or the policy underlying those tests), although it does draw heavily on various factors identified in cases involving child sexual abuse in those jurisdictions.*
>
> *The "relevant approach" described in the other reasons is necessarily general. It does not and cannot prescribe an absolute rule. Applications of the approach must and will develop case by case. Some plaintiffs will win. Some plaintiffs will lose. The criteria that will mark those cases in which an employer is liable or where there is no liability must and will develop in accordance with ordinary common law methods. The Court cannot and does not mark out the exact boundaries of any principle of vicarious liability in this case*.

As such, while the High Court has now provided some guidance about the '*relevant approach'* to be followed in future cases, particularly where survivors of institutional child sexual abuse seek to hold an institution vicariously liable for the criminal acts of an employee, it is clear that no absolute rule has been prescribed and that the issue of vicarious liability will be determined on the facts and evidence of each case. As Gageler and Gordon JJ noted:[32]

> *The course of decisions in this Court[33] and the courts of final appeal in the United Kingdom and in Canada reveals that decisions concerning vicarious*

[30] At [84]
[31] At [130] – [131]
[32] At [128]
[33] See *Deatons Pty Ltd v Flew* (1949) 79 CLR 370 at 381-382; [1949] HCA 60

responsibility for intentional wrongdoing are particularly fact specific. Decisions in the United Kingdom[34] and Canada[35] recognise that resolution of each case will turn on its own particular facts and that existing cases provide guidance in the resolution of contestable and contested questions. The overseas decisions also expose a difficulty in undertaking any analysis by reference to generalised "kinds" of case. Why? Because the "[s]exual abuse of children may be facilitated in a number of different circumstances"[36].

Also, in the *Prince Alfred College* case the appellant school, in resisting the respondent plaintiff's application for an extension of time, argued that because of the length of the delay in commencing proceedings and consequential deficiencies in the evidence it could not properly defend the claim against it. The plurality decided, following its identification of the 'relevant approach' to the issue of the appellant's vicarious liability, that a determination as to liability could not be made in the case, for those reasons.

Their judgment makes it very clear that in future historical cases, even after the limitation barrier has been removed, that in applying the High Court's 'relevant approach' to determining issues of liability courts will need to be highly cognisant of any forensic disadvantage arising for the defendant due to the passage of time and loss of evidence.

In looking at the implications of the High Court's decision for survivors, it is anticipated that despite the guidance provided by the High Court as to the relevant approach in these cases, survivor plaintiffs will continue to face difficulties in establishing vicarious liability on the part of institutions for a number of reasons, including:

- in cases outside a strict employer-employee relationship;[37]
- uncertainty around whether the facts of their case fall within those where a court may hold the institution vicariously liable; and
- in historical cases where it might be expected that defendant institutions will readily be able to identify forensic disadvantage in assembling evidence in their defence such as evidence about the nature of the role assigned to the employee, the nature of the relationship between the employee and the victim, and the features of that relationship, particularly the ability of the employee to achieve intimacy with the victim.

On the first point, many **knowmore** clients have reported being abused by persons associated with institutions, but who were not formally employed by the institution. For example, priests and other church personnel are often not employed by their church.

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[34] *Dubai Aluminium Co Ltd v Salaam* [2003] 2 AC 366 at 378 [26] cited in *Mohamud v Wm Morrison Supermarkets plc* [2016] AC 677 at 692 [41], 694 [50]

[35] *Bazley v Curry* [1999] 2 SCR 534 at 545 [15] cited in *Jacobi v Griffiths* [1999] 2 SCR 570 at 590 [31], J*ohn Doe v Bennett* [2004] 1 SCR 436 at 445 [20] and *EB v Order of the Oblates of Mary Immaculate in the Province of British Columbia* [2005] 3 SCR 45 at 69 [38]

[36] *Various Claimants v Catholic Child Welfare Society* [2013] 2 AC 1 at 26 [85]

[37] As the Discussion Paper notes, in the United Kingdom and in Canada, courts have expanded institutional liability beyond employees to others who have relationships which are 'sufficiently analogous' or 'akin' to employment: *Woodland v Essex County Council* [2013] UKSC 66

Volunteers and contractors such as cleaners or support workers as well as other participants or residents of the institution are not employees. These categories of persons who are associated with institutions have been consistently identified by **knowmore's** clients as perpetrators of abuse. This constitutes an insurmountable hurdle in the ability of survivors to hold institutions liable for injuries arising from child abuse by such perpetrators.

While the reforms currently under consideration are to operate prospectively and will therefore not at this time assist for claims based on historical circumstances, the above reasons support the need for legislation to be enacted, as recommended by the Royal Commission. In recommending the creation of this new form of statutory strict liability for institutions, the Royal Commission in its report very aptly noted the priorities applied in property law:

> *"The principle in relation to property was recognised centuries ago when, in* Hern v Nichols, *Sir John Holt said* 'somebody must be a loser by this deceit, it is more reason that he that employs and puts a trust and confidence in the deceiver should be a loser than a stranger'.[38] *In our opinion, it is time the same principle applied to the care of children."*[39]

Question 4 - If the recommendation is adopted, which organisations should be subject to a new non-delegable duty of care? For example. Should a new duty:

(a) Only be imposed on institutions which operate for profit, and have the care, supervision or control of children for a period of time?

(b) Only apply to large organisations?

(c) Extend to organisations which provide services to children as well as adults?

The Commission in its report noted the following, in relation to limiting the application of the new non-delegable duty:

> *"We consider it undesirable to impose the liability on non-for-profit institutions that are not providing particularly high-risk services because the risk of liability, or the cost of insuring against it, may force them to cease providing services and activities for children. Many community-based not-for-profit or volunteer institutions offer opportunities for children to engage in cultural, social and sporting activities."*[40]

It is our experience that there are some larger not-for-profit institutions providing a significant level of services to children, which in turn generates a significant level of risk. We

[38] *Hern v Nichols* (undated c.1700) 1 Salk 289
[39] Royal Commission, *Redress and Civil Litigation Report* (2015), p.491
[40] Royal Commission, *Redress and Civil Litigation Report* (2015), p.491

understand that these institutions are insured and/or should have the means to meet any judgment against them arising from an action for institutional child abuse. These 'larger' not for profit institutions include those such as Scouts Australia, the YMCA, State Police Citizen Youth Clubs and sporting bodies such as Surf Life Saving Australia, Tennis Australia and Swimming Australia. Given the findings of the Royal Commission to date, and the level of risk attaching to the services delivered by such institutions to children, in our submission it would not be appropriate to exempt all not-for-profit organisations from the proposed non-delegable duty, and larger not-for-profit institutions should be subject to the new duty.

The issue then arises as to how the boundaries for inclusion/exclusion of such institutions might best be fixed. **knowmore** submits that the list set out in Recommendation 90 is appropriate, but could be expanded so as to include some larger not-for-profit organisations providing services to children, such as those noted above. One way to do that, which **knowmore** submits for consideration, is that the test for inclusion of not-for-profit institutions in the list for which the non-delegable duty applies, be based on the organisation's annual turnover. We suggest a threshold above $3 million annually. We note that the benchmark of $3 million turnover will be used for compliance by entities with the amendments to the Commonwealth *Privacy Act 1988* to come into effect in February 2018.

The new non-delegable duty should apply to institutions which work with children as well as adults. It should not just apply to organisations that work solely with children. Many of the Royal Commission's hearings dealt with institutions that provided services to children and to adults. For example, Case Study 27 examined the sexual abuse of children in the context of a private medical practice as well as in the context of public hospitals. In both instances the services being provided by the institution were to children as well as to adults. Other examples include the Defence forces and sporting organisations; both types of organisations may provide extensive services to teenagers, some of whom will be aged under 18 years, and some over. Many **knowmore** clients have cited perpetrators who were working in institutions which provided services to both adults and children. Providing services exclusively to children should not be a limiting factor. Instead the nexus should be that a component of the services offered by that institution includes providing services to children.

Question 5 - Should legislation list the organisations on which the non-delegable duty would be imposed, or would a more general definition be appropriate?

A review of institutions named by clients of **knowmore** as institutions where perpetrators offended indicates that the majority of such institutions would fall within one of the six categories listed in the Commission's Recommendation 90. If the additional descriptor for larger not-for-profit institutions is included we suggest that would be sufficient.

Listing of individual organisations would require significant resources to ensure timeliness and accuracy.

Question 6 - If your organisation provides services to children, how would the imposition of a non-delegable duty impact on your organisation? Would it affect your organisation's ability to provide services to children?

knowmore has on some occasions assisted young people aged under 18 years. As a not-for-profit community legal service it would fall within the scope of the new duty, on the basis of the above suggestion about including larger not-for-profit organisations based on annual turn-over.

As a service providing services to a client group that are predominantly survivors of child sexual abuse, that outcome is appropriate.

Reverse onus of proof

The Discussion paper at 5.9 has asked that for each of the recommendations, consideration be given to the impact of the scope of the definition of child abuse. As noted, it is our submission that a broad definition of child abuse be accepted for all of the civil litigation recommendations, consistent with the definition employed in the amending limitations laws. In relation to the impact of this broader definition on the recommendation about the reverse onus reform, we note:

- this reform would cover all institutions (as opposed to the non-delegable duty);
- institutions would need to show that they had taken reasonable care to prevent the abuse from occurring;
- the care of children should not be limited to the prevention of sexual abuse, but should extend to the prevention of serious physical abuse and connected abuse;
- while it is likely that insurance premiums will increase because of the exposure to more claims; the focus should be on the steps implemented to ensure that reasonable care has been taken to prevent abuse;
- this would include ongoing training of those associated with the institution as to what reasonable care for their institution entails; and
- the outcome is likely to be a heightened awareness of the need to protect children from all forms of abuse, and safer institutions.

Question 7 - Should the Royal Commission's recommendation to reverse the onus of proof in child abuse claims be adopted?

Recommendation 91 of the Royal Commission states:

> *Irrespective of whether state and territory parliaments legislate to impose a non-delegable duty upon institutions, state and territory governments should introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. The 'reverse onus' should be imposed on all institutions,*

including those institutions in respect of which we do not recommend a non-delegable duty be imposed.

Accepting this recommendation would make an institution liable for child abuse committed by persons associated with the institution, unless the institution discharges this reverse onus. That is, a duty of care would be imposed on institutions to take reasonable care to prevent the abuse of a child by a person associated with the institution, while the child is in the care, supervision or control of the institution.

It should be noted that the reverse onus has been enacted in legislation in Victoria in the *Wrongs Act 1958* (Vic).[41]

We are of the view that the Royal Commission's recommendation should be adopted.

Question 8 - What would be the benefit and/or implications of defining the term 'reasonable steps' in legislation?

It is our submission that it is not necessary to define a test for what constitutes 'reasonable care'. It follows that what amounts to 'reasonable steps'(or really 'reasonable care') will be informed by the existing law of negligence and the relevant provisions of the *Civil Liability Act 2002 (*NSW) in the context of the circumstances of the particular case. Guidance can be drawn from existing case law about negligence, including decided cases of institutional child abuse. For example, in *Lepore,* McHugh J suggested the following as reasonable steps:

- implementing systems to provide early warning of possible offences;
- random and unannounced inspections to deter misconduct;
- prohibiting adults from being alone with a child; and
- encouraging children and adults to notify authorities or parents about any signs of aberrant or unusual behaviour.[42]

In the High Court decision in *Prince Alfred College*, Gageler and Gordon JJ referred to the difficulties in generalising, given how the sexual abuse of children may be facilitated in numerous and different circumstances.[43]

"Decisions in the United Kingdom and Canada recognise that resolution of each case will turn on its own particular facts and that existing cases provide guidance in the resolution of contestable and contested questions."

In this context, it should be noted that the Commission also said:

The steps that are reasonable for an institution will vary depending upon the nature of the institution and the role of the perpetrator in the institution. For example, more

[41] See s. 91

[42] *NSW v Lepore* [2003] HCA 4 at [164]

[43] *Prince Alfred College Incorporated v ADC* [2016] HCA 37 [128]

might be expected of a commercial institution than a community-based voluntary institution. Similarly more might be expected of institutions in relation to employees than contractors."[44]

The approach adopted in Victoria is to provide some guidance around what is required through the incorporation of a note to section 91(3) of the *Wrongs Act,* which says the following in relation to the concept of an institution taking 'reasonable precautions' [as per the language of s.91(3) and the Royal Commission's report]. The note states:

Reasonable precautions will vary depending on factors including but not limited to-

(a) the nature of the relevant organisation; and
(b) the resources that are reasonably available to the relevant organisation; and
(c) the relationship between the relevant organisation and the child; and
(d) whether the relevant organisation has delegated the care, supervision or authority over the child to another organisation; and
(e) the role in the organisation of the perpetrator of the abuse.

It is submitted that a similar approach could be adopted in the New South Wales' legislation. The question of what is reasonable will ultimately depend on the circumstances of each institution and case. Attempts to more closely define what is reasonable are unlikely to be helpful, given that this reform will apply to all institutions (and therefore a wide variety of organisations).

Question 9 - If the recommendation is adopted, would it be useful to develop guidelines or industry standards about what is considered to be 'reasonable'?

See our response to question 8 above.

Question 10 - Would it be appropriate for a definition of reasonable steps to be graduated according to the type of service provided? If so, on what basis?

See our response to question 8 above.

Question 11 - How could it be ensured that 'reasonable steps' were actually effective to improve the safety of children?

The Commission has already published a significant body of material[45] which will be useful to guide institutions about the implementation of effective child safety practices. The Royal

[44] Royal Commission *Redress and Civil Litigation Report* (2015), p.494
[45] See, for example, the report *Key elements of Child Safe Organisations: Research Study,* published by the Commission in July 2016; and the various pieces of work referred to on its website: http://www.childabuseroyalcommission.gov.au/policy-and-research/our-policy-work/making-institutions-child-safe.aspx

Commission's work should continue to inform the development of both practice and the law in these cases.

Question 12 - Would the recommendation to reverse the onus of proof affect an organisation's ability to provide services to children?

As discussed above, a possible outcome of introducing legislation impacting upon the liability of institutions, including imposing a reverse onus of proof, is that for institutions offering services to children insurance premiums may be increased. Obviously insurance availability in this area will depend on typical factors such as the risks arising and claims histories; that is, institutions that adopt effective child safety practices should be rewarded with less expensive insurance coverage. As the Royal Commission in its report noted:

> *The significant financial consequences that may flow if the standard is not met create powerful incentives for institutions and their insurers to take steps to ensure that abuse is prevented. Changes to the duties of institutions do more than provide an additional or more certain avenue for victims of abuse to seek compensation after institutional child sexual abuse has occurred. Changes to the duties of institutions are critical measures for preventing institutional child sexual abuse occurring in the first place.*[46]

The proposed reforms may mean that some smaller institutions will no longer be able to offer services and this may well impact the community. However, as we have outlined above, the prevailing public interest must be in ensuring that all organisations delivering services to children do so safely.

Question 13 – Should the Royal Commission's recommendation to extend institutional liability to 'all persons associated with an institution' be adopted?

The Royal Commission's Recommendation 92 states:

> *For the purposes of both the non-delegable duty and the imposition of liability with a reverse onus of proof, the persons associated with the institution should include the institution's officers, office holders, employees, agents, volunteers and contractors. For religious organisations, persons associated with the institution also include religious leaders, officers and personnel of the religious organisation.*[47]

knowmore supports the Royal Commission's recommendation.

We recognise the special position of trust a perpetrator may attain through their association with an institution. For many of our clients, the perpetrators of their abuse were not direct

[46] Royal Commission, *Redress and Civil Litigation Report* (2015), p.494
[47] Royal Commission, *Redress and Civil Litigation Report* (2015), p.77

employees of an institution, but were associated with the institution in other capacities, such as those captured by recommendation 92.

It has been our experience that often perpetrators gain trust and credibility as a result of their relationship with an organisation. Which they in turn use to facilitate opportunities to offend. Organisations represent those associated with them as trustworthy individuals.[48] In some cases, parents only entrust their children to a non-government organisation because of this special relationship of trust.[49]

We agree with the Royal Commission's observation that "*child sexual abuse can occur within any institution where there are children and a motivated perpetrator. Some perpetrators will actively try to manipulate institutional conditions to create an opportunity to sexually abuse. Institutions can take certain actions to reduce risk factors and enhance protective factors. These involve considering the role of an institution's policies, climate, culture and norms."*[50]

Extending liability to all persons associated is necessary to strengthen such protective measures.

Adopting recommendation 92 would acknowledge the institution's responsibility in creating relationships of trust not confined to direct employment, and clarify a legal duty to take appropriate safeguards to minimise the risk of abuse that arises because of this.[51]

We submit that the non-delegable duty and the reverse onus of proof reform should extend to all persons associated with an institution, as defined above. This is crucial to recognise the institution's responsibility and to create a 'deterrent' effect.

Increasing responsibility of institutions in this manner would:

- Clarify the liability of institutions for all parties.[52]
- Provide clearer compensation options for those who have suffered abuse.
- Create cultural change in institutions through a motivation to adopt stronger preventative measures, due to the financial incentive to meet requirements of insurance and the more stringent duty to show reasonable precautions were taken (the reverse onus of proof).
- Shift the financial burden from communities and survivors to the institutions responsible.[53]

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[48] Parliament of Victoria, *Betrayal of Trust, Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, November 2013, p.544

[49] Parliament of Victoria, *Betrayal of Trust, Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, November 2013, p.544

[50] Royal Commission into Institutional Responses to Child Sexual Abuse, Literature Review, *Risk Profiles for Institutional Child Sexual Abuse*, October 2016, p.9

[51] Law Council of Australia, submission to the Royal Commission on Issue Paper 5, *Civil Litigation*, 25 March 2014, p.16

[52] **knowmore**, Response to Consultation Paper, Issues Paper 5, *Redress and Civil Litigation,* 17 March 2014, p. 25

[53] **knowmore**, Response to Consultation Paper, Issues Paper 5, *Redress and Civil Litigation,* 17 March 2014, p.18

We noted in an earlier submission that an objective of law reform in this context should be "*… to ensure the cost of child abuse is fairly borne by those who were responsible for that harm."* [54]

Question 14 – If the recommendation is adopted, should the term 'associated with' be defined in legislation, or decided on a case by case basis?

The term 'associated with' should be non-exhaustively defined in legislation. We submit that the definition of 'associated with' should be defined broadly for the following reasons:

- In our experience the scope of institutions and scenarios where an organisation is responsible for a perpetrator having contact with a child is broad.[55]
- Claims should not be excluded due to a novel or unexpected category of relationship. [56]
- So that institutions cannot avoid liability through delegation of the care, supervision or authority of a child to third parties.[57]
- So that the financial burden of child abuse is not unfairly borne by the victim and the community.[58]

We said the following in our submission to the Victorian Government on the Creation of a Redress Scheme for Institutional Child Abuse:

> *Despite a legislated definition, it will be possible for an institution to dispute responsibility in any specific case where it is considered that the facts of the institution's relationship with the alleged abuser should not found institutional responsibility. These types of cases are likely to turn on their own facts, and do not therefore in any event lend themselves to ready definitional resolution*. [59]

We note that the amending Victorian legislation included the qualification that the reverse onus liability does not apply to abuse committed in circumstances *"wholly unrelated"* to the perpetrator's association with an institution:

> *(6) Subsection (2) does not apply to abuse of a child committed by an individual associated with a relevant organisation in circumstances wholly unrelated to that individual's association with the relevant organisation.*[60]

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[54] **knowmore**, Response to Consultation Paper, Issues Paper 5, *Redress and Civil Litigation,* 17 March 2014, p.4

[55] **knowmore**, Response to Consultation Paper, Issues Paper 5, *Redress and Civil Litigation,* 17 March 2014, p.17

[56] Explanatory Memorandum, Wrongs Amendment (Organisational Child Abuse) Bill 2016 (Vic), p.4

[57] Explanatory Memorandum, Wrongs Amendment (Organisational Child Abuse) Bill 2016 (Vic), p.4

[58] k**nowmore**, Response to Consultation Paper, Issues Paper 5, *Redress and Civil Litigation,* 17 March 2014, 18

[59]**knowmore,** *Submission to the Victorian Government on the Creation of a Redress Scheme for Institutional Child Abuse*, 2015, p. 17 See: http://knowmore.org.au/resources/other-submissions/

[60] Section 91(6) *Wrongs Act 1958* (Vic)

Question 15 – should the range of persons 'associated with' an institution capture all of those referred to in the Royal Commission's recommendation? That is:

(a) for non-religious institutions: the institution's officers, office holders, employees, agents, volunteers and contractors

(b) for religious organisations: religious leaders, officers and personnel.

Yes, see our response to question 13 above.

Question 16 - How closely associated should an institution and a perpetrator need to be to result in potential liability? For example:

(a) Should an institution be liable for abuse perpetrated by an employee of a contracted cleaning company? What about a subcontractor of that cleaning company?

(b) Should an institution be liable for abuse committed by an employee or volunteer in their own home, against a child met through the institution?

The Royal Commission stated that "*the steps that are reasonable for an institution will vary depending upon the nature of the institution and the role of the perpetrator in the institution. For example, more might be expected of a commercial institution than a community-based voluntary institution. Similarly, more might be expected of institutions in relation to employees than contractors. "*[61]

Depending on the closeness of the relationship between the relevant organisation and the perpetrator, the burden of proving reasonable precautions may be different.[62]

To consider the examples raised in the Discussion paper:

(a) Should an institution be liable for abuse perpetrated by an employee of a contracted cleaning company? What about a subcontractor of that cleaning company?

The employee of the contracted cleaning company would be captured by the proposed definition of 'associated persons' of an institution. The subcontractor should also be captured. We note the Victorian legislation specifically provides for delegation, by means of contract or otherwise, of the care, supervision or authority over the child to whom the proceeding relates, [63] in order to ensure organisations cannot avoid liability through delegation. This is an important consideration.

However, under the reverse onus reform, whether the institution should be liable for the intentional criminal conduct of either the employee of the contracted cleaning company or a subcontractor of that cleaning company depends on the type of institution and the interpretation of what are 'reasonable steps' for each category of associate. The burden for the institution in discharging the reverse onus would differ depending on which category of

[61] Royal Commission report, *Redress and Civil Litigation Report* (2015), p.56

[62] Explanatory Memorandum, Wrongs Amendment (Organisational Child Abuse) Bill 2016 (Vic), p.4

[63] *Wrongs Act 1958* (Vic), s.90(1)(c) and (d)

associate was the perpetrator. If it is a high risk institution operated for profit, it may be desirable that both classes of associate found liability on the part of the institution. If on the other hand it is a not-for-profit institution providing a low risk service, the 'reasonable steps' onus might mean that liability would not be imposed on that institution.

(b) Should an institution be liable for abuse committed by an employee or volunteer in their own home, against a child met through the institution?

There must be the potential for the institution to be liable where the institution is responsible for and/or has facilitated the abuser having contact with the applicant.[64] We have heard of many instances where offenders have used their connection and status within an institution to groom and otherwise manipulate children and to in turn facilitate offending in a variety of settings, such as outside the institution.

However, scope should also exist for an institution to be able dispute responsibility depending on the facts of the institution's relationship with the perpetrator and the circumstances of the case.[65] As noted, the Victorian provision providing for the 'wholly unrelated' test seems appropriate. Such a provision would allow for the institution to argue that the perpetrator's association with the institution had nothing at all to do with the abuse committed.

Again, in reverse onus cases, what are 'reasonable steps' on the part of the institution may also assist in resolving cases where there is less proximity.

We have previously submitted that a narrow interpretation of 'institutional child sexual abuse' should not be adopted:

> *"In particular, the Parliamentary Inquiry and the Royal Commission will have been informed of many examples, as **knowmore** has, of children being abused in circumstances falling within sub-paragraph (iv) of the definition of 'institutional context' in the Royal Commission's Letters Patent; that is, where perpetrators have misused their position and association with an institution, and the consequent relationship of trust with the child victim, to commit sexual offences. It is important that this reality be recognised in the eligibility criteria and that a narrow approach not be adopted, that limits eligibility to only abuse that occurred within institutions themselves. Such an approach would unfairly exclude thousands of survivors of what is quite properly and currently recognised under the Royal Commission's Letters Patent as "institutional child sexual abuse". We do not anticipate major difficulties, in the practical application of a redress scheme, arising from the inclusion of a 'catch-all' style provision such as paragraph (v) of the definition of 'institutional context' in the Royal Commission's Letters Patent; that is, abuse is taken to have occurred in an 'institutional context' if it happens in any other circumstances where the institution*

[64] **knowmore** legal service, *Submission to the Victorian Government on the Creation of a Redress Scheme for Institutional Child Abuse*, 2015, p. 17

[65] **knowmore** legal service, *Submission to the Victorian Government on the Creation of a Redress Scheme for Institutional Child Abuse*, 2015, p.17

is, or should be treated as being, responsible for the adult abuser having contact with the applicant." [66]

iii. Issue B: Ensuring there is someone to sue

The existing problems confronting many survivors in both identifying the proper defendant to sue, and/or having an institution make assets available to meet an award of damages in a civil action, have been addressed at length in the Royal Commission's report.

Consistent with what we have said already in this submission, and in relation to the forms of abuse to be covered, we strongly support reforming legislation being drafted in terms that do not arbitrarily or unjustly exclude some survivors from being able to effectively bring claims against relevant institutions. Such a situation would be unjust in also holding only some institutions with responsibilities relating to children, and not some others, to the new duties recommended by the Royal Commission.

Accordingly, the legislation enacting the Commission's recommendations must be drafted in such a way that that it enables survivors to bring a civil action against all institutions that will bear the onus of the new duties that are proposed, and for those bodies to be required to put forward a proper defendant with the capacity to meet any judgment.

From our work with clients who have sought redress from a very wide range of institutions, including in recent years, we would be concerned with any proposals that may leave the assumption of legal liability by an institution, when facing an abuse claim, dependent upon a voluntary choice by the institution to put forward a proper defendant or to choose whether or not to assist the plaintiff to identify the correct defendant (as would be the situation, for example, if this issue was only addressed through model litigant style guidelines for institutions, similar to those already adopted by the New South Wales government [67]). If this is the case, we predict that the outcome will be, in some cases, an unwillingness by some institutions to volunteer or identify a legal person to be the defendant, and who in turn has assets to meet any eventual judgment.

We have already seen some instances of institutions (including religious bodies) continuing, notwithstanding public exposure through the Royal Commission's hearings, to exhibit reluctance to deal with and accept claims from survivors. This includes actions that could only be described as obfuscation, in responding to potential plaintiffs' efforts to have the correct defendant identified or confirmed.

Nor should the reforming legislation stop at simply providing for the nomination by the institution of an associated legal person who is capable of being sued, for the purposes of

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[66] **knowmore** legal service, *Submission to the Victorian Government on the Creation of a Redress Scheme for Institutional Child Abuse*, 2015, p.17

[67] See principle # 19 of those Guidelines – available at: http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/guiding-principles-civil-claims-child-sexual-abuse.aspx

any claim and any liability incurred. This would seem to leave open the possibility of a natural person nominating as the proper defendant, but who may lack the means to satisfy a judgment. It does not compel, as explained below, the provision of assets held by another arm of the relevant organisation (such as the property trust associated with a religious body), to be made available to meet the organisation's liability.

Simply put, we expect that if liability is left to a matter of voluntary assumption, some institutions will ultimately do what they can to avoid liability – either to protect assets, or to compel claims to be resolved (to its perceived advantage), outside the framework of a formal claim for damages.

In summary, the ability of a survivor to bring a claim should not be dependent upon the institution's co-operation in providing a defendant. Nor should the victim/plaintiff be put through the expense, delay and trauma of having to investigate to identify the correct defendant. Fairness requires that the onus to identify and provide a proper defendant be upon the institution. The amending legislation should not replicate past power imbalances to the detriment of survivors. This position is also consistent with the Commission's recommendation 98, regarding the development of model guidelines by both government and non-government institutions expecting to receive civil claims for institutional child sexual abuse.

Question 17 – Should the Royal Commission's 'proper defendant' recommendation be adopted?

The Royal Commission in its report made the following recommendation (# 94):

State and territory governments should introduce legislation to provide that, where a survivor wishes to commence proceedings for damages in respect of institutional child sexual abuse where the institution is alleged to be an institution with which a property trust is associated, then unless the institution nominates a proper defendant to sue that has sufficient assets to meet any liability arising from the proceedings:

a. *The property trust is a proper defendant to the litigation*
b. *Any liability of the institution with which the property trust is associated that arises from the proceedings can be met from the assets of the trust.*

This recommendation should be adopted. The outcome of this reform will be that survivors are able to sue a readily identifiable entity that has the financial capacity to meet a claim arising from institutional child sexual abuse. Given the current state of the law,[68] legislative reform is needed to effect change.

The Law Council of Australia in its submission to the Royal Commission's Issues Paper 5 noted that faith based associations often behave as a legal entity, and their associated bodies will often have significant assets in property trusts and enjoy the benefit of

[68] *Trustees of the Roman Catholic Church v Ellis and Anor* [2007] NSWCA 117

succession, whereas individual perpetrators within the organisation typically have few assets of their own so that a civil claim against them would be unlikely to produce meaningful compensation for a survivor of child sexual abuse.[69]

The Victorian government in amending the *Wrongs Act 1958* introduced reform which effectively has left institutions with a discretion to nominate a proper defendant. Section 92 (1) of that Act states:

> *If an entity is not capable in law of being sued, it may nominate, with the consent of the nominee, a legal person that is so capable as the appropriate defendant for the purposes of a claim brought in reliance on the duty in section 91 and any liability incurred by the entity by reason of section 91(2) is incurred by the nominated legal person.*

It is our submission that any proposed legislation introduced in New South Wales to implement this recommendation be worded in accordance with the Royal Commission's recommendation and in such a way as to remove any discretion on the part of relevant institutions.

Question 18 - Do the difficulties in identifying a proper defendant arise in respect of non-religious organisations?

Yes, the issue dealt with in Recommendation 94 may arise with unincorporated associations, regardless of whether the association is a religious organisation or not. For reasons of confidentiality we will not herein set out details of such institutions, but we are happy to elaborate in future consultations.

Where non-religious organisations are of a type where it would be appropriate to impose the non-delegable statutory duty, we expect that ordinarily they will have an incorporated structure.

Question 19 - How would the proposed reforms impact on non-religious organisations?

Importantly, implementation of Recommendation 94 would ensure such organisations are properly accountable for claims arising from institutional child abuse, and cannot avoid the responsibilities arising from the enactment of the abovementioned reforms to institutional liability, merely through structuring the organisation and/or its assets in a way that allows the Ellis defence to be used.

There is no reason to exempt non-religious organisations. If the Royal Commission's recommendations about the liability of institutions are adopted it follows that Parliament should also ensure that those reforms have practical effect and that no institution can avoid

[69] Law Council of Australia, Submission Number 29 to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Civil Litigation: Issues Paper 5,* 21 March 2014

liability (in appropriate cases where liability is established). The proposed reform will help drive compliance with expected standards of care and protection on the part of such organisations in their delivery of services to children. It will ensure that the deterrent function of the reforms can be fulfilled and that all institutions are encouraged to be proactive and preventative in their approach to managing the risks around delivering services to children.

An alternative approach (see below) is to require all organisations receiving funding to provide services to children to incorporate and to hold relevant insurance.[70]

> **Question 20 - Should the recommendations apply to all property trusts (including private trusts), or to statutory trusts only? What level of association should there be between the institution and the trust?**

It is our submission that this recommendation should be extended to all trusts connected with the organisation. There is little point in compelling organisations to provide a proper defendant if there will be no assets available to satisfy any judgment.

knowmore's submission to the Royal Commission's Issues Paper 5 noted that problems around identifying a proper defendant could be overcome with legislation such as the Catholic Church Trust Property Amendment (Justice for Victims) Bill 2012, presented by Mr David Shoebridge MLC. In that submission we also stated our agreement with the Victorian Parliament's Family and Community Development Committee's *Betrayal of Trust* Report, that non-government organisations could be required to incorporate in order to access insurance, tax exemptions and other entitlements.[71]

As the Royal Commission noted in its report, its recommended approach allows institutions to retain the ability to conduct their affairs in a variety of ways (including how they might approach the issues of who is nominated as a proper defendant and how any outcome is funded). As such, Recommendation # 94 provides institutional child abuse plaintiffs with a fall-back position that is not dependent on the co-operation of the institution.[72]

> **Question 21 - If applicable: Has your organisation already established a proper defendant for child abuse claims? If so, does it have responsibility for taking steps to prevent child abuse from occurring? Which sub-organisations is it responsible for?**

Not applicable.

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[70] See Recommendation # 95 of the Royal Commission, *Report on Redress and Civil Litigation*, (2015)
[71] Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (2013), p.536; cited in **knowmore** Submission Number 17 to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Civil Litigation: Issues Paper 5* (17 March 2014) p. 8
[72] Royal Commission, *Redress and Civil Litigation Report* (2015), pp.509-511

Question 22 - Should institutions be required to nominate a 'proper defendant' for all claims, including past abuse?

Yes. Given the type of harm sought to be addressed, the absence of a proper defendant has a particularly anti-therapeutic and inevitably re-traumatising effect on potential plaintiffs. It exploits existing power imbalances. At the present time, it also forces survivors through institutional redress pathways which do not always have meaningful outcomes and often result in the survivor signing away legal rights because of the lack of other justice options.[73]

Question 23 - Should institutions be required to nominate a proper defendant with a particular legal structure? If so, what would an appropriate legal structure be?

In our submission this should not be a requirement, as it may make the law overly prescriptive. As noted above, the Royal Commission has framed its recommendations in a way that allows institutions choice around how they provide a proper defendant. The requirement for a property trust to be the deemed or default proper defendant should be sufficient to incentivise institutions to consider who the proper defendant to an action should be (and to so identify that defendant).

Question 24 - If an institution does not cooperate by nominating a defendant to a child abuse claim, what would a reasonable 'fall back' option be?

As discussed above, Recommendation # 94 provides for the property trust to be deemed to be the proper defendant, for institutions which have an associated property trust. The concerns raised in submissions to the Royal Commission about the limitations arising from the purposes of such trusts and the duties of trustees can be overcome readily by the institution putting forward a proper defendant that it chooses.

Question 25 - Would it be reasonable to require every institution working with children to incorporate, or to have an incorporated 'proper defendant'? What would the impacts of this be?

We note the observations made by the Royal Commission around not being satisfied that it was appropriate to recommend that any particular institutions should be incorporated and insured,[74] given the potential impacts for smaller community based and non-commercial organisations.

In response to Issues Paper 5 the Law Council of Australia submitted that associations receiving government funding should be required to incorporate (so as to provide a proper

[73] **knowmore** Submission Number 17 to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Civil Litigation: Issues Paper 5* (17 March 2014), p.6
[74] Royal Commission, *Redress and Civil Litigation Report* (2015), p. 511

defendant), as a requirement for receiving that funding. We agree with this submission.[75] It is not unduly onerous to create an eligibility requirement for government funding that the association be incorporated. While this may exclude some organisations from the ability to compete for funding we do not believe this to be unduly onerous given the gravity of the harm sought to be addressed by these reforms.

One relevant consideration is that if every institution working with children were required to incorporate then the impact on small, non-commercial, community groups may effectively inhibit their operation, thereby significantly reducing the amount of activities and opportunities available to children at a community level. Another related impact would be the privatisation of these community groups as this important community function is driven to corporations with sufficient funds; i.e. out of the hands of community. Privatisation of these kinds of groups would reduce their accessibility (e.g. they may price-out community members reliant on free or cheaper services) and impede their ability to respond to the specific and nuanced needs of their community.

We submit it is not necessary to require incorporation of all relevant organisations. If there are appropriate requirements around the availability of a proper defendant and the existence of a deemed defendant, then there is sufficient incentive for an association to incorporate to provide a proper defendant, or otherwise make one available. The requirement is that there be an available legal entity to answer a claim; incorporation is merely one way to achieve this. As noted, institutions should retain discretion around this point, especially since incorporation has traditionally been a means of limiting liability. This would allow the law to be coercive and regulatory without being prescriptive and inflexible.

However, we support the Royal Commission's recommendation 95, that the New South Wales Government should consider whether there are any unincorporated bodies that it funds directly or indirectly to provide children's services, and whether they should be required to maintain insurance that covers their liability in respect of institutional child abuse claims. This should be a mandatory consideration for Government in advancing funding to any organisation.

In our view, recommendation 95 is founded on sound policy principles. In funding bodies to provide services for children, Government should rightly be concerned that such bodies have a capacity to meet any liability incurred through those activities. The child victim should not be the party to bear any default arising from how the body is structured and whether it is insured or not.

In this context, we also note Recommendation 26.1 of the *Betrayal of Trust* report of the Victorian Parliament,[76] which was as follows:

[75] Law Council of Australia, Submission Number 29 to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Civil Litigation: Issues Paper 5* (21 March 2014), p.16

[76] Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (2013)

That the Victorian Government consider requiring non-government organisations to be incorporated and adequately insured where it funds them or provides them with tax exemptions and/or other entitlements.

Recommendation 26.2 of that report was

That the Victorian Government work with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures.

If an institution is not prepared to take steps in relation to its structure and insurance coverage that would enable it to meet any liability for child abuse arising from its provision of services to children, it should not in any way be engaged or supported by Government.

There are a multitude of examples in society where Government prescribes certain prerequisites, through legislation, for the delivery of services to members of the public. The underlying policy rationale is principally to ensure the protection of the public. One such example is the legal profession; legal services can only be provided by qualified and accredited persons, who submit to compliance obligations, who practice in one form of a limited number of structures set out in the legal profession legislation, and who hold compulsory insurance to cover claims of professional negligence. Surely no lesser standards should be imposed on those bodies seeking Government funding or exemptions to provide services to children?

Question 26 - Would it be appropriate in all cases for the assets of a property trust to be used for the purpose of civil claims for child sexual abuse?

In our submission this should be answered in the affirmative, in line with reasoning in response to question 20. The responsibility should be on the institution to nominate a more appropriate source of funds to settle claims against the institution if it wishes to preserve trust assets.

Question 27 - Is the Royal Commission's recommendation workable? What are other options for reform?

a) Is the Royal Commission's recommendation workable?

While these issues are complex, we are not persuaded that there is any basis not to proceed with implementing the Commission's recommendation.

b) What are other options for reform?

One approach is that taken by the Supreme Court of England where it overcame a defence similar to that seen in the Ellis case by deeming the relevant unincorporated association a corporate body:

Because of the manner in which the Institute carried on its affairs, it is appropriate to approach this case as if the Institute were a corporate body existing to perform the function of providing a Christian education to boys, able to own property and, in face, possessing substantial assets.[77]

However, the common law in Australia has not developed in a similar direction. In the present context, where the harm is great and the need for reform has been clearly identified by the Royal Commission, overcoming this delayed development with clear legislation restricted to a particular cause of action against institutions is the clearest way forward.

This will provide certainty to institutions around their liability, certainty to claimants around the availability and identity of a proper defendant and certainty to the courts as they develop jurisprudence that strikes the appropriate balance between the interests of organisations servicing the needs of children and protecting children from harm.

Question 28 - Is the approach in the United States (where claims can be made against unincorporated associations) a more effective means to ensure that religious and not-for-profit organisations are legally responsible for abuse (see 7.14 to 7.17)? What is the scope for applying similar approaches in NSW?

We do not have sufficient familiarity with how the approach in the United States operates in practice to offer informed comment. We would note that while such a position may resolve the first issue, being the availability of an appropriate defendant with legal personality, it may not necessarily follow that assets would be made available to meet any judgment.

iv. Issue C: Requirement to have insurance

We have supported the implementation of the Royal Commission's Recommendation # 95 in our responses above. The only additional comments we wish to make upon the issues raised in questions 29 to 41 are as follows:

- We again note the comprehensive nature of the consultation undertaken by the Royal Commission in developing its recommendations, which included extensive liaison with institutions and their insurers.
- Insurance regarding loss arising from claims for sexual abuse has long been available for institutions (so called 'molestation' clauses/coverage), and many institutions have such coverage in place.

[77] *The Catholic Child Welfare Society and others v Various Claimants and The Institute of the Brothers of the Christian Schools and others* [2012] UKSC 56 [33]

- As noted in paragraph 8.5 of the Discussion paper, it is commonplace for adequate insurance arrangements to be required in order to establish eligibility for receipt of government funding in other service delivery areas. As the paper notes, it would not be difficult to extend these requirements to address specific coverage for child abuse.
- In terms of the impact of insurance and consequent claims upon institutions and insurers, the changes to the duty of institutions were recommended by the Royal Commission to apply prospectively, allowing the opportunity to consider risk, reform practices and put in place appropriate coverage.
- It is to be expected that a requirement to have insurance in place may drive an improvement in child protection practices, with insurers and insured organisations have a mutual interest in identifying and addressing risks that might otherwise have significant financial consequences for both parties.
- As is the usual situation with insurance policies, there will be a duty of disclosure on the part of institutions (that is, an obligation to give timely notice of circumstances that might found a claim). To fail to do so may jeopardise coverage and expose the organisation to liability and loss that it must itself bear. As such, a requirement to hold adequate insurance may help to reduce episodes, seen with disturbing regularity in the Royal Commission's public hearings, of institutions seeking to cover up or ignore credible reports of child abuse. From a risk perspective, it is unlikely that insurers would tolerate institutional practices, as were again exposed by the Royal Commission, of institutions responding inappropriately to legitimate complaints by moving alleged perpetrators to other locations and otherwise failing to effectively address the risk. Insured against.
- For organisations that do not receive Government funding, such as religious organisations, there are other steps that the Commonwealth and State governments could take to require adequate insurance coverage, such as linking that requirement to the criteria that must be met to attract recognition of charitable status.
- While it is beyond our knowledge, we anticipate that overseas jurisdictions such as the United Kingdom and Canada, where the common law has advanced ahead of Australia, might be able to provide useful guidance about the matters raised in this section of the Discussion paper, and the impacts for insurers and underwriters.

v. Overall impact of the recommendations

Throughout this submission we have made several observations around the overall impact of the proposed reforms, relevant to questions 43 and 44 of the Discussion paper.

From the experience **knowmore** has gained over the past four years while working with survivors of institutional child sexual abuse, we would see that if the proposed reforms are introduced they will bring certainty for both survivors and institutions in this area of law.

The Commission in its report addressed the view that to introduce these reforms would somehow be 'unfair' and unduly favouring the individual over the institution:

> *Arguments that this would be unfair, favouring the individual to the detriment of the institution, lose their force when it is recognised that choice is one between two innocent parties – the survivor and the institution.*[78]

In conclusion, we emphasise the importance of the anticipated possible improvements in child safety that will result from the introduction of these reforms, and note our support for the conclusions drawn by the Royal Commission:

> *We recognise that introducing a new duty and reversing the onus of proof may lead to increased insurance premiums for institutions. However, legal duties are important for prescribing the standard that the community requires of institutions. The significant financial consequences that may flow if the standard is not met create powerful incentives for institutions and their insurers to take steps to ensure that abuse is prevented. Changes to the duties of institutions do more than provide an additional or more certain avenue for victims of abuse to seek compensation after institutional child sexual abuse has occurred. Changes to the duties of institutions are critical measures for preventing institutional child sexual abuse occurring in the first place.*[79]

[78] Royal Commission *Redress and Civil Litigation Report* (2015), p.491
[79] Royal Commission *Redress and Civil Litigation Report* (2015), p.494

Appendix 1

knowmore
Service snapshot

knowmore is an independent service giving free legal advice to people who are considering telling their story or providing information to the Royal Commission into Institutional Responses to Child Sexual Abuse.

knowmore is a unique, national legal service, providing trauma-informed and holistic services to survivors and other people considering engaging with the Royal Commission.

Callers can access legal help, social worker/counsellor support and Aboriginal and Torres Strait Islander engagement advisors to talk to if they wish.

We have offices in Brisbane, Melbourne and Sydney.

Free call: 1800 605 762
info@knowmore.org.au
www.knowmore.org.au

knowmore began providing services to the public on 8 July 2013 – as of 30th June 2017, we've helped:

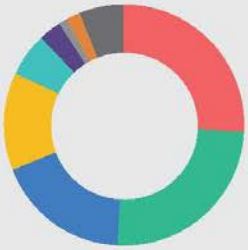
7368 unique clients

72640 client activities

Our current client-facing team includes:

- 18 lawyers
- 5 social workers/counsellors
- 3 Aboriginal and Torres Strait Islander engagement advisors

Calls came from



NSW	25%
QLD	27%
VIC	18%
WA	13%
SA	6%
TAS	3%
ACT	1%
NT	2%
Unspecified/Overseas	5%

Community outreach and liaison

Face to face legal services were provided to **967 clients**

knowmore has conducted or participated in **1705** community outreach and liaison events

81 Royal Commission private sessions that **knowmore** staff have accompanied clients to as their support person

As at 30th June 2017

knowmore
Service snapshot

Counselling/ social work

All clients have access to social work/counselling assistance in addition to legal assistance

4468 clients received social work/counselling support either directly or through case consultation

4783 clients have been referred to other support services from **knowmore**

Specialist staff for Aboriginal and Torres Strait Islander clients

knowmore has a strong commitment to providing culturally appropriate services to Aboriginal and Torres Strait Islander clients

23% of our clients identify as being of Aboriginal and Torres Strait Islander descent

We employ 3 experienced male and female Aboriginal engagement advisors.

We also work closely with interpreters and Aboriginal and Torres Strait Islander community organisations to ensure that we are engaging respectfully and appropriately with people

Our clients

59% were aged 45 and over

38% identified as females

62% identified as males

21% required more than one advice session

Feedback

From a service provider...
"We look forward to continuing our relationship with you as we move forward in our aim to create safer communities, by providing awareness and linking survivors of childhood abuse to services that can provide emotional, mental, physical, legal and financial support."

From a client...
"Thank you to everyone who worked with me, but particularly (**knowmore** lawyer and social worker) for their tireless efforts to help. I believe that **knowmore** should never be shut down because the work is so important to people like me who would otherwise have been left out in the cold. Each and every person I have dealt with at **knowmore** has made me feel safe and respected."

From a client...
"I do think the system let me down... you have done more for me in the last few years than they did in my life time... so thank you for listening... and actually hearing what I was saying... and most importantly caring about me and what I was saying."

knowmore has been established by the National Association of Community Legal Centres with funding from the Australian Government represented by the Attorney-General's Department.

knowmore
Free legal help to navigate the Royal Commission